No. 396 131

Motion to Advance

OFFICE SUPREME COURT U.S.
FILED
FEB 25 1899
JAMES H. McKENNEY,
Clerk

IN THE

SUPREME COURT

OF THE

United States.

Filed Feb. 25, 1899.

OCTOBER TERM, 1898.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
Complainant and Appellant,

vs.

W. H. TOMPKINS, W. T. LAFOLLETTE and ALEXANDER KIRKPATRICK, Constituting the Board of Railroad Commissioners of the State of South Dakota, Defendants and Respondents.

No. 396.

Motion.

Counsel for the Appellees.

Attorney General of the State of South Dakota.

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OCTOBER TERM, 1898.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Complainant and Appellant,

vs.

No. 396.

W. H. TOMPKINS, W. T. LaFOLLETTE and ALEXANDER KIRKPATRICK, Constituting the Board of Railroad Commissioners of the State of South Dakota, Defendants and Respondents.

Motion.

Come now the defendants, appellees, by their counsel appearing in that behalf and move the court to advance the above entitled cause for argu-

ment and hearing because this action was begun in the Circuit Court in and for the district of South Dakota, to enjoin the defendants as a board of railroad commissioners from the publication and promulgation of a certain schedule of reasonable maximum rates of fares for the transportation of passengers, freight and cars by railways in the state of South Dakota, which schedule had been adopted by the defendants and was about to be published and promulgated as provided by the laws of the state of South Dakota, and particularly Chapter 110 of the Session Laws of 1897, relating to common carriers, that at the time of the commencement of this action a temporary injunction was granted, and, notwithstanding a decree in favor of the defendants upon the merits, continued in force to the present time and during the proceedings upon appeal in this court.

That the reduction in charges for transportation that will result from the enforcement of the proposed schedule will amount, as estimated by complainant, on the basis of the business transacted during the years 1894, 1895, 1896 and 1897, to $682,164.70 in freight, and $227,912.07 in passenger business, or an average annual reduction of $170,-541.17 on freight and $56,978.01 in passenger business on complainant's railway in South Dakota. See Exhibit 31, page 566 of the record. That this case is in effect a suit against the state and of great public interest.

That no adequate provision has been, nor can be made for the protection of the people of South Dakota against over charges pending this appeal except to leave each shipper or passenger to an individual suit to recover such over charge.

Wherefore, the defendants and respondents respectfully move the court to advance this cause for argument so that the same may be argued and finally submitted during the present term of this court, and suggest that the same be set down for argument at such time during the month of April as will suit the convenience of the court.

J H Null
Counsel for the Appellees.

John L Pyle
Attorney General for the State of South Dakota.

Notice of Motion.

Chicago, Milwaukee & St. Paul Railway Company, Complainant and Appellants,

vs.

W. H. Tompkins, W. T. LaFollette and Alexander Kirkpatrick, Constituting the Board of Railroad Commissioners of the State of South Dakota, Defendants and Respondents.

To Messrs. George R. Peck and A. B. Kittredge, counsel for appellants:

Please take notice that on Monday, the 27th day of February, 1899, at the opening of the Court

or as soon thereafter as counsel can be heard, the motion of which the foregoing is a copy will be submitted to the Supreme Court of the United States for the decision of the said Court thereon.

Counsel for the Appellees.

Attorney General of the State of South Dakota.